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SUBJECT: HUMAN RIGHTS IN CHILE

1. INTERNATIONAL COMMISSION OF JURISTS (ICJ) RELEASED
SEPTEMBER 5 AT GENEVA 39 PAGE FINAL REPORT, A STUDY OF
"THE LEGAL SYSTEM AND THE PROTECTION OF HUMAN RIGHTS IN
CHILE".

2. ICJ'S OWN SUMMARY OF FINDINGS FOLLOWS:

I. ALTHOUGH THE MILITARY JUNTA DECLARED THAT THE PURPOSE
OF THEIR COUP WAS "TO RE-ESTABLISH ORDER AND THE CON-
STITUTIONAL LAW", THE COUP ITSELF WAS UNCONSTITUTIONAL.
SO ALSO WAS THE ASSUMPTION BY THE JUNTA OF THE POWERS
OF THE PRESIDENT AND THE LEGISLATURE, THE DISSOLUTION OF
THE PARLIAMENT AND THE PROCLAMATION OF A STATE OF SIEGE
AND STATE OF INTERNAL WAR.

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II. THE ARGUMENT WHICH HAS BEEN ACCEPTED BY SOME,

INCLUDING THE MEMBERS OF THE SUPREME COURT OF CHILE, THAT THE ASSUMPTION OF THESE POWERS AS A TEMPORARY MEASURE WAS NECESSARY "IN ORDER TO UPHOLD THE CONSTITUTION", CANNOT BE RECONCILED WITH THE FACT THAT THE JUNTA HAVE MADE IT PLAIN THAT THEY HAVE NO INTENTION OF RESTORING THE CONSTITUTION. THEY HAVE SET UP A COMMISSION

OF CONSTITUTIONAL REFORM AND HAVE APPROVED ITS STATEMENT OF PRINCIPLES FOR A NEW CONSTITUTION OF A VERY DIFFERENT CHARACTER FROM THE DEMOCRATIC CONSTITUTION OF 1925.

III. THE DECLARATION THAT THE COUNTRY IS IN A "STATE OF WAR" IS A FICTION WHICH IS MAINTAINED FOR THE SAKE OF THE INCREASED POWERS IT CONFERS UPON THE GOVERNMENT, IN PARTICULAR THE VERY SUMMARY WAR-TIME SYSTEM OF MILITARY JUSTICE AND THE POWER TO DETAIN PEOPLE AT WILL ADMINISTRATIVELY WITHOUT TRIAL.

IV. THE SYSTEM OF "MILITARY JUSTICE IN TIME OF WAR" (WHICH IS INTENDED TO APPLY IN ACTUAL WAR SITUATIONS IN BESIEGED TOWNS OR ZONES WHERE FIGHTING IS TAKING PLACE) IS SUMMARY IN THE EXTREME. THE PRE-TRIAL INVESTIGATION IS SUPPOSED TO BE COMPLETED WITHIN 48 HOURS AND THE TRIAL ITSELF USUALLY FOLLOWS WITHIN ANOTHER 48 HOURS, THUS LEAVING INSUFFICIENT TIME OR OPPORTUNITIES FOR THE PREPARATION OF THE DEFENCE.

V. OF THE SEVEN MEMBERS OF THE MILITARY TRIBUNALS (KNOWN AS COUNCILS OF WAR) ONLY ONE IS LEGALLY QUALIFIED, AND THERE IS NO FORM OF APPEAL TO A HIGHER COURT. THE RESULT IS THAT SERIOUS ERRORS OF LAW OCCUR WITH NO REMEDY. EXAMPLES OF ILLEGALITIES REPORTED TO HAVE OCCURRED INCLUDE EXECUTION UNDER ILLEGAL DEATH SENTENCES, RETROSPECTIVE APPLICATION OF MORE SEVERE PENALTIES IMPOSED BY DECREE LAWS, DECISIONS GIVEN IN CASES WHERE THE TRIBUNAL HAD NO RIGHT TO TRY THE CASE, IMPROPER ACCEPTANCE OF CONFESSIONS EXTRACTED UNDER TORTURE, CONVICTION FOR OFFENCES WHICH DID NOT FORM PART OF THE CHARGE AND EVEN FOR OFFENCES NOT KNOWN TO THE LAW, CONVICTIONS NOT SUPPORTED BY THE EVIDENCE, AND CONVICTIONS

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BY IMPROPERLY CONSTITUTED TRIBUNALS.

VI. THE ABSENCE OF ANY APPEAL MACHINERY TO CORRECT JUDICIAL ERRORS IS A VIOLATION OF CHILE'S OBLIGATIONS UNDER ARTICLE 3 OF THE GENEVA CONVENTIONS OF 1949.

VII. CASES HAVE OCCURRED OF DEFENCE LAWYERS BEING THREATENED AND INTIMIDATED AND THEY ARE FORBIDDEN BY

MILITARY TRIBUNALS TO RAISE "POLITICAL" ARGUMENTS BY WAY OF DEFENCE, SUCH AS THE LEGALITY OF THE ALLENDE REGIME OR THE ILLEGALITY OF THE PRESENT REGIME.

VIII. AN ESTIMATED TOTAL OF 60,000 PERSONS WERE ARRESTED AND DETAINED FOR AT LEAST 24 HOURS BETWEEN THE COUP AND THE END OF MARCH 1974. ABOUT 9,000 TO

10,000 WERE STILL IN CUSTODY AT THE END OF THAT PERIOD.
(THERE HAS BEEN ANOTHER LARGE WAVE OF ARRESTS SINCE THEN.)

IX. ARRESTS FOR SECURITY OFFENCES ARE CARRIED OUT BY OR UNDER THE ORDER OF ONE OF THE FOUR QUASI-INDEPENDENT INTELLIGENCE SERVICES, NAMELY THOSE OF THE ARMY, NAVY, AIR FORCE AND CARABINEROS.

X. MANY OF THESE ARRESTS ARE CARRIED OUT ILLEGALLY EVEN UNDER THE JUNTA'S OWN DECREES, THAT IS TO SAY WITHOUT PRIOR WRITTEN WARRANT. PEOPLE ARE ARRESTED ANONYMOUSLY BY MEMBERS OF THESE SERVICES IN PLAIN CLOTHES IN CARS WITHOUT NUMBER PLATES. NEITHER THEIR FAMILIES NOR THEIR LAWYERS KNOW BY WHOM THEY HAVE BEEN ARRESTED, OR WHY OR WHERE THEY ARE HELD, AND IT OFTEN TAKES WEEKS AND EVEN MONTHS TO FIND OUT. MANY OF THOSE ARRESTED ARE STILL MISSING. CERTAINLY OVER 500 WERE MISSING AT THE END OF MARCH.

XI. PERSONS ARRESTED ARE TAKEN FIRST TO MILITARY BARRACKS OR POLICE STATIONS OF THE CARABINEROS OR TO SPECIAL INTERROGATION CENTRES, WHERE IT IS COMMON FOR THEM TO BE HELD "INCOMUNICADO" FOR 8 TO 12 WEEKS. THIS MEANS THEY CANNOT COMMUNICATE WITH ANYONE, NOT EVEN THEIR FAMILIES OR LAWYERS, AND THEY ARE FREQUENTLY KEPT IN UNCLASSIFIED

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SOLITARY CONFINEMENT. SUCH LONG PERIODS OF "INCOMUNICADO" ARE ILLEGAL UNDER THE PENAL CODE AND UNDER THE JUNTA'S OWN DIRECTIONS.

XII. A SUBSTANTIAL NUMBER OF THOSE ARRESTED HAVE BEEN SUBJECTED TO TORTURE. METHODS EMPLOYED HAVE INCLUDED ELECTRIC SHOCK, BLOWS, BEATINGS, BURNING WITH ACID OR CIGARETTES, PROLONGED STANDING, PROLONGED HOODING AND ISOLATION IN SOLITARY CONFINEMENT, EXTRACTION OF NAILS, CRUSHING OF TESTICLES, SEXUAL ASSAULTS, IMMERSION IN WATER, HANGING, SIMULATED EXECUTIONS, INSULTS, THREATS, AND COMPELLING ATTENDANCE AT THE TORTURE OF OTHERS. A NUMBER OF PEOPLE HAVE DIED UNDER TORTURE AND OTHERS HAVE SUFFERED PERMANENT MENTAL AND NERVOUS DISABILITY.

XIII. IN A SMALL NUMBER OF CASES MILITARY PERSONNEL HAVE BEEN PROSECUTED FOR ILL-TREATING ARRESTED PERSONS, BUT THESE DO NOT INCLUDE MEMBERS OF THE INTELLIGENCE SERVICES OR PERSONNEL FROM THE INTERROGATION CENTRES.

XIV. THE INTELLIGENCE SERVICES OPERATE AS A LAW UNTO THEMSELVES AND AT TIMES THE HIGHER AUTHORITIES NEITHER KNOW OR NOR APPEAR ABLE TO CONTROL THEIR ACTIVITIES. AN EXAMPLE WAS THE SWISS JOURNALIST ARRESTED IN APRIL

BY THE AIR FORCE INTELLIGENCE SERVICE AND SEVERELY TORTURED. THE JUNTA WERE STILL DENYING THAT HE HAD BEEN ARRESTED BY ANY OF THE AUTHORITIES FOUR DAYS AFTER HIS ARREST.

XV. MANY OF THOSE HELD IN ADMINISTRATIVE DETENTION ARE HELD IN EXCESSIVELY REMOTE AND FORBIDDING PLACES (E.G. DAWSON ISLAND AND CHACABUCO), AND THEY ARE NOT ABLE TO RECEIVE EVEN THE REGULAR VISITS FROM THEIR FAMILIES ENJOYED BY COMMON CRIMINALS. ONLY RARELY DO THEIR LAWYERS HAVE ACCESS TO THEM.

XVI. ADMINISTRATIVE DETAINEES ARE NOT TOLD THE REASONS FOR THEIR DETENTION OR THE FACTS ON WHICH IT IS BASED AND HAVE THEREFORE NO OPPORTUNITY TO CHALLENGE THEM. THERE IS NO SYSTEM OF APPEALS OR REVIEW BY A REVIEW UNCLASSIFIED

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TRIBUNAL OR OTHER IMPARTIAL BODY.

XVII. VIRTUALLY ALL THE FOREIGNERS WHO WANTED TO LEAVE CHILE HAVE NOW BEEN ALLOWED TO DO SO, OR HAVE LEFT CLANDESTINELY. IN GENERAL, THE GOVERNMENT HAS MADE GOOD ITS UNDERTAKING TO FULFIL ITS OBLIGATIONS UNDER THE INTERNATIONAL CONVENTIONS CONCERNING ASYLUM.

3. IN THEIR COMMENTS AND CONCLUSIONS AT THE END OF THE REPORT, THE MISSION RECOMMEND THAT:

(I) THE PROCESS OF RELEASE OF PERSONS HELD UNDER ADMINISTRATIVE DETENTION SHOULD BE SPEEDED UP AND THE STATE OF SIEGE SHOULD BE LIFTED.

(II) AS LONG AS SUCH DETENTION CONTINUES, IN ORDER TO REDUCE THE RISK OF TORTURE AND ILL-TREATMENT

(A) THE REGULATIONS CONCERNING WRITTEN WARRANTS FOR ARRESTS AND THE LIMITED PERIOD OF INCOMUNICADO (NORMALLY 3 DAYS, 8 DAYS IN SPECIAL CASES) SHOULD BE STRICTLY ENFORCED;

(B) FAMILIES AND DEFENCE LAWYERS SHOULD BE INFORMED OF THE PLACE OF DETENTION AND AUTHORITY FOR THE ARREST;

(C) DEFENCE LAWYERS SHOULD BE ENTITLED TO SEE THEIR CLIENTS AT ANY TIME AFTER THE PERIOD OF INCOMUNICADO;

(D) ADMINISTRATIVE DETAINEES SHOULD BE HELD IN REASONABLE CONDITIONS IN PLACES WHERE THEIR FAMILIES CAN VISIT THEM REGULARLY;

(E) NAMES OF ADMINISTRATIVE DETAINEES WITH DATES OF ARREST AND RELEASE SHOULD BE PUBLISHED IN THE OFFICIAL GAZETTE;

(F) AN EFFECTIVE JUDICIAL REMEDY SHOULD BE AVAILABLE TO ENFORCE THESE PROVISIONS.

(III) THE "STATE OF WAR" AND SYSTEM OF "MILITARY JUSTICE UNCLASSIFIED

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IN TIME OF WAR" SHOULD BE ENDED WITHOUT DELAY, AND ALL CIVILIANS SHOULD BE TRIED EITHER BY THE ORDINARY CIVILIAN COURTS OR BY MILITARY COURTS OPERATING UNDER THE PEACE-TIME PROCEDURE WITH FULL RIGHTS OF APPEAL.

(IV) FACILITIES FOR DEFENCE LAWYERS SHOULD BE IMPROVED AND THEY SHOULD BE ENABLED AND ENCOURAGED TO DEFEND THEIR CLIENTS VIGOROUSLY AND FEARLESSLY.

(V) STUDIES SHOULD BE PUT IN HAND TO BRING UP-TO-DATE THE CODE OF MILITARY JUSTICE.

(VI) PENAL PROVISIONS WHICH VIOLATE INTERNATIONALLY ACCEPTED NORMS (SUCH AS PUNISHMENT BY DEATH FOR PERSONS RE-ENTERING THE COUNTRY CLANDESTINELY) SHOULD BE REPEALED WITHOUT DELAY. KISSINGER

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